

**UNITED STATES EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE  
MULTI-STAKEHOLDER GROUP ADVISORY COMMITTEE MEETING  
SEPTEMBER 9-10, 2014**

**SUMMARY OF PROCEEDINGS**

**U.S. DEPARTMENT OF THE INTERIOR  
PREPARED: SEPTEMBER 2014**

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## **I. Introduction**

The U.S. Department of the Interior (DOI) convened the eleventh meeting of the U.S. Extractive Industries Transparency Initiative (EITI) Multi-Stakeholder Group Advisory Committee (MSG) on September 9-10, 2014 in Washington, DC. The purpose of the meeting was to obtain updates on the work of the Implementation, State and Tribal Opt-In, and Communications Subcommittees; interface with the Independent Administrator; and move forward with efforts to advance from candidate to compliant country status under the EITI requirements.

Presentations and discussions during the two days included the following:

- **Welcoming remarks** by Paul Mussenden, Interior Department
- **USEITI MSG Business:**
  - **MSG Membership Continuity Plan** by Jennifer Goldblatt, Interior Department
  - **EITI International Update** by Marti Flacks, State Department
- **State and Tribal Opt-In Subcommittee Recommendations**
  - **Letter to Governors** by Johanna Nesseth Tuttle, Chevron
  - **Letter to Tribal Leaders** by Jerry Gidner, Interior Department
- **Implementation Subcommittee Recommendations**
  - **Contextual Narrative** by Greg Conrad, Interstate Mining Compact Commission, and Aaron Padilla, American Petroleum Institute
  - **Taxes and Reporting Period** by Curtis Carlson, Treasury Department
  - **Revised 2014 USEITI Work Plan** by Chris Mentasti, Office of Natural Resources Revenue
  - **Company and Project Level Reporting** by Paul Bugala, Calvert Investments
- **Communications Subcommittee Recommendations**
  - **General Update on Communications Subcommittee** by Veronika Kohler, National Mining Association
  - **Communications Materials** by Jerry Gidner, Interior Department

- **DOI Online Data Portal** by Michelle Hertzfeld, General Services Administration - 18F
- **Independent Administrator Engagement**
  - **Roles, Responsibilities, & Communication** by Bill Blake and Sherri Glover, Interior Department
  - **2014/2015 Project Plan** by Greg Gould, Office of Natural Resources Revenue
- **Inception Report Overview** by Greg Arend, Jane Kapral, and Alex Klepacz, Deloitte
- **2015 Implementation Timeline** by Greg Gould, Office of Natural Resources Revenue

## II. Summary of Action Items and Decisions

### A.) Action Items

- **Co-Chairs:**
  - Track subcommittee progress
  - Address issues as they arise
  - Review meeting summary from September 2014 MSG meeting
  - Develop agenda for December 2014 MSG meeting
  - Resolve how to ensure transparency in communications between MSG members and the Independent Administrator, particularly around questions asked by MSG members, subcommittees, and sectors to the Independent Administrator and answers provided by the Independent Administrator
  - Going forward, include pending decisions that need to be made by the MSG on MSG meeting agendas
- **Implementation Subcommittee:**
  - Clarify and refine the nature of tax payments that would be included in reporting and which entities would be asked to participate in such reporting for the first (2015) USEITI report
  - Articulate the rationale against reporting and/or reconciliation of tax cash payments
  - Consider what kind of phased approach might be taken to come into compliance with the EITI requirement around tax reporting and reconciliation
  - Consider what, how, and when to articulate the challenges associated with corporate tax reporting and reconciliation to the International EITI Board
- **Communications Subcommittee:**
  - Solicit feedback on the following questions from MSG members regarding the Communications Plan:
    - Are there relevant stakeholder groups that are missing?

- For the included stakeholder groups, are there any tools that should be added?
  - Are there other partners that should be included in outreach and communications activities?
  - Other comments
- Develop a robust communications plan around the launch of the USEITI 2015 Report
- Develop a communications strategy around tax reporting and reconciliation to diverse audiences
- **US Department of State:**
  - Schedule a meeting with the new State Department representative to International EITI with the USEITI co-chairs
- **Project Level Reporting working group**
  - Collect the following information from MSG members and legal counsel:
    - Collect from industry: what types of information could cause “substantial harm” if reported
    - Collect from civil society and from industry: what types of data would be useful to report
    - Legal limitations on reporting
- **Independent Administrator:**
  - Identify existing publicly available C-corporation cash tax payments from extractive industry payors
- **USEITI Secretariat:**
  - Provide orientation and “on-boarding” of the Independent Administrator
  - Develop a schedule for subcommittee work leading up to the December MSG meeting
  - Ensure that the development of the contextual narrative and its integration into the full USEITI report is fully articulated in the 2015 project plan/timeline
  - Share the detailed timeline/project plan with the Implementation Subcommittee
  - Provide copies of the 2015 work plan to the MSG
  - DOI will work within the Department to have the MSG-approved Governor’s letter signed
- **CBI:**
  - Create a draft meeting summary for the September 2014 MSG meeting
  - Create and publish online a transcript of Secretary Jewell's introductory comments from the June 2014 MSG meeting
  - Going forward, include pending decisions that need to be made by the MSG on MSG meeting agendas

## B.) Decisions

- The MSG endorsed the Membership Continuity Plan for the USEITI Secretariat to implement.

- The MSG adopted the June MSG meeting summary with the addition of including a transcription of Secretary Jewell's introductory comments.
- The MSG approved the Letter to Governors, with edits suggested by MSG members.
- The MSG approved the Contextual Narrative outline.
- The MSG approved the Revised 2014 USEITI Work Plan.
- The MSG approved the use of the calendar year as the reporting period.
- DOI will work with the Communications Subcommittee and its attorneys to determine how to frame the Dear Reconciler letter such that it can be sent out under Secretary Jewell's name
- The MSG approved the Communications materials prepared by the Communications Subcommittee, with edits as discussed at the meeting.
- The MSG provisionally endorsed Deloitte's appointment as the Independent Administrator, contingent on Deloitte presenting to the MSG qualifications of additional IA core team members with experience with development issues.

### **III. Day 1 Presentations and Key Discussion Points: September 9, 2014**

Mr. Paul Mussenden, Acting Designated Federal Officer (DFO), U.S. Department of the Interior (DOI), opened the meeting and welcomed participants. He recognized attendance by three International EITI Board members: Stuart Brooks, Guillermo Garcia, and Jim Miller. He also noted that three individuals from the newly-appointed Independent Administrator were attending the meeting: Greg Arend, Jane Kapral, and Alex Klepacz.

#### **A.) USEITI MSG Business**

##### **1.) New MSG Members**

Mr. Paul Mussenden, DOI, welcomed two new members to the MSG: Johanna Nesselth Tuttle, Chevron, has joined the MSG as a primary member from the industry sector, and David Romig, Freeport-McMoRan Oil & Gas, joined the MSG as an alternate member representing the industry sector. Mr. Mussenden also welcomed Claire Ware, Shoshone & Arapaho Tribes, to the meeting as an observer and noted that she has been nominated for a seat on the MSG as a tribal representative from the government sector.

##### **2.) Membership Continuity Plan**

Ms. Jennifer Goldblatt, DOI, explained that the USEITI Secretariat has developed a Membership Continuity Plan to address the expiry of the terms of service of many MSG members in December 2015 (three years after their appointment in December 2012). The Plan would resubmit one-third of the MSG appointees who are being put forward for renewal each in the fall of 2014, the spring of 2015, and the fall of 2015 such that all of these appointees should be able to continue their service without interruption beyond December 2015. The USEITI Secretariat will work with the Co-Chairs to

determine which members are interested in being re-appointed for ongoing service on the MSG Advisory Committee. Ms. Goldblatt also reiterated the expectations of USEITI primary and alternate members as described in the Terms of Reference.

In response to Ms. Goldblatt's comments, MSG members asked the following questions and made the following suggestions:

- Ms. Danielle Brian, Project on Government Oversight, asked whether it would be appropriate to consider expertise in other industries, such as forestry and fisheries, in light of the planned expansion of the scope of USEITI to cover these commodities in future reports.
  - In response, Mr. Greg Gould, ONRR, suggested that the Implementation Subcommittee could take up discussion around future expansion of scope and associated MSG representation.
- Mr. John Harrington, ExxonMobil, suggested that, in the future, a third of the MSG appointees be reappointed each year to avoid a rush similar to the current situation.
- Ms. Veronika Kohler, National Mining Association, stated that she would like to maintain the continuity of the current MSG through the issuance of the first USEITI report in December 2015.
- Ms. Veronica Slajer, North Star Group, suggested that the number of tribal seats on the MSG be expanded to four, with two designated for the lower 48 states and two designated for Alaskan tribes.
  - In response, Mr. Greg Gould, ONRR, clarified that the currently-allocated two seats actually yield four places (2 primary representatives and 2 alternate representatives), which could meet Ms. Slajer's request once tribal representatives are nominated to fill those seats.
- Mr. Brent Roper, Rio Tinto, asked whether those MSG members who have joined the Committee after USEITI was already underway have a full three-year term, extending beyond December 2015.
  - In response, Ms. Goldblatt clarified that these replacement members have almost all been nominated to complete the terms of the individuals who they replaced, which means that their terms will expire in December 2015. The recent appointment of David Romig, Freeport-McMoRan, was done differently, to give him a full three-year term, and future nominations will also be done in this manner.
- Mr. Michael Flannigan, Peabody Energy, asked whether there is a concern that current members are not sufficiently committed or working hard enough.
  - Mr. Greg Gould, ONRR, responded that the people attending the meeting are all participating actively. He noted that members can be removed from the MSG for inadequate participation, but that this is not a concern for those in attendance.

- Mr. Paul Mussenden, ONRR, added that the expectations for participation should also be kept in mind for and by future MSG members.
- **Decision: The MSG approved the Membership Continuity Plan and directed the USEITI Secretariat to implement it.**

### 3.) Charter Renewal

Mr. Paul Mussenden, ONRR, reported that the USEITI Secretariat had successfully filed for the renewal of the USEITI charter on schedule. A copy of the renewed charter is available here:

[http://www.doi.gov/eiti/FACA/upload/2014\\_SIGNED\\_USEITI\\_Charter\\_8\\_13\\_14.pdf](http://www.doi.gov/eiti/FACA/upload/2014_SIGNED_USEITI_Charter_8_13_14.pdf).

### 4.) USEITI June 2014 Meeting Summary

The MSG discussed, and approved, the meeting summary from the June 2014 USEITI MSG meeting. Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, suggested that the meeting summary include a full transcription of Secretary of the Interior, Sally Jewell's comments to the MSG. The MSG endorsed Ms. Taylor's suggestion to publish a transcription of Secretary Jewell's comments.

A copy of the final, approved meeting summary from the June 2014 MSG meeting is available here: <http://www.doi.gov/eiti/FACA/upload/USEITI-MSG-June-2014-Meeting-Summary-FINAL-DRAFT-FOR-MSG.pdf>

- **Decision: The MSG approved the meeting summary from the June 2014 USEITI MSG meeting and agreed to publish a transcription of Secretary Jewell's comments from that meeting.**

### 5.) EITI International Update

Ms. Marti Flacks, US Department of State, welcomed the three member of the EITI International Board who attended the meeting. She also mentioned that Mary Warlick, who has replaced Bob Cekuta as the US representative on the EITI International Board, will attend the December USEITI MSG meeting.

Ms. Flacks reported that the most recent EITI meeting was held in Mexico City in early July. The International EITI Board admitted both Seychelles and Myanmar as candidate countries at this meeting and designated both the Democratic Republic of the Congo and Guinea as EITI Compliant. She also reported that USEITI had a presence at the United States–Africa Leaders Summit that took place in early August in Washington DC.

Ms. Flacks said that the next EITI International Board meeting would be held in Myanmar in October, where the Board will consider the candidacy applications of the United Kingdom and of Colombia. Ms. Flacks offered to distribute the UK candidacy application to the USEITI MSG. She also stated that the EITI International Board and

Secretariat have been working to update materials to bring them into line with the revised EITI standards.

A copy of the UK EITI Application is available here: [PDF](#), along with Annex A: [PDF](#).

In response to Ms. Flacks' comments, MSG members asked the following questions:

- Ms. Veronika Kohler, National Mining Association, asked how USEITI would maintain continuity in its representation and participation at the international level with Bob Cekuta's departure.
  - Ms. Flacks responded that Mr. Cekuta's replacement, Mary Warlick, is very familiar with energy issues due to her past work in Eastern Europe and Australia and that she would take Mr. Cekuta's seats on Subcommittees at the international level. She offered to set up a meeting between Ms. Warlick and the USEITI Co-Chairs. Ms. Flacks added that an additional staff person from the US Department of State, Haley Rice, would be supporting the USEITI effort.
- Mr. Aaron Padilla, American Petroleum Institute, inquired whether there was still interest in hosting an International EITI meeting in the United States.
  - Ms. Flacks answered that, although this suggestion had not been discussed recently, she was happy to explore that possibility.

## **B.) State and Tribal Opt-In Subcommittee Recommendations**

### **1.) Letter to Governors**

The MSG received an update from the State and Tribal Opt-In Subcommittee on their work and recommendations to the MSG with regards to sending outreach letters to state governors and to tribal leaders.

Ms. Danielle Brian, Project on Government Oversight, showed a map illustrating the commodities in each of the 18 states identified by the State and Tribal Opt-In Subcommittee as likely candidates for opting into the USEITI program. A copy of that map can be found here: <http://www.doi.gov/eiti/FACA/upload/State-Opt-In-Presentation-Map-Slide.pdf>.

Ms. Johanna Nesselth Tuttle, Chevron Corporation, introduced the draft Letter to Governors that the Subcommittee created. She noted that the Subcommittee tried to be sensitive to concerns that state governments may have about the federal government asking them to participate in a reporting program and so instead asks Governors permission to allow USEITI to access their existing data. Ms. Nesselth Tuttle suggested that this could be a first step towards full participation by state governments. A copy of the draft Letter to Governors is available here: [http://www.doi.gov/eiti/FACA/upload/EITI\\_Letter\\_to\\_Governors\\_-\\_DRAFT.pdf](http://www.doi.gov/eiti/FACA/upload/EITI_Letter_to_Governors_-_DRAFT.pdf).

In response to Ms. Nesselth Tuttle's comments, MSG members asked the following questions and made the following comments:

- Mr. Michael LeVine, Oceana, noted a typographical error and suggested that the language in the first paragraph be amended to account for the possible expansion in scope of the commodities covered by USEITI in the future.
  - Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, suggested that additional states, beyond the 18 priority states identified by the Subcommittee, might also choose to opt-into USEITI.
  - Mr. John Harrington, ExxonMobil, and Brent Roper, Rio Tinto, suggested that the letter be amended to include a list of the Governors to whom the letter is being sent so that recipients can see how many other states are being outreached to.
  - Mr. Mike Smith, Interstate Oil and Gas Compact Commission, explained that the IOGCC will have between 20 and 25 state governors and their representatives attending its upcoming meeting and suggested that it might be helpful to have a representative from USEITI at that meeting to interface with the governors.
  - Ms. Veronica Slajer, North Star Group, requested that a copy of the letter be distributed to all MSG members.
  - The MSG approved the letter, pending the changes suggested by MSG members.
- **Decision: The MSG approved the Letter to Governors, with edits suggested by MSG members.**

## 2.) Letter to Tribal Leaders

Mr. Jerry Gidner, Department of the Interior, said that the Letter to Tribal Leaders contains much of the same information as the Letter to Governors. It was sent out to tribal leaders in late July 2014 under Assistant Secretary Rhea Suh's signature. He noted that, following the dissemination of the letter, Ms. Claire Ware was nominated to take a tribal seat from the government sector for USEITI. Mr. Gidner also noted that the State and Tribal Opt-In Subcommittee will need to work with the Communications Subcommittee to develop a communications and outreach plan to engage with tribes around the letter.

Ms. Veronica Slajer, North Star Group, requested that a copy of the letter be distributed to all MSG members.

## C.) Implementation Subcommittee Recommendations

Mr. Greg Gould, Office of Natural Resources Revenue, introduced the work of the Implementation Subcommittee. He noted that many people had been working hard through the summer on USEITI business. The updates from the Implementation Subcommittee covered the following topics:

- Contextual Narrative
- Taxes and Reporting Period
- Revised 2014 USEITI Work Plan



- Company and Project Level Reporting

### 1.) Contextual Narrative

Mr. Greg Conrad, Interstate Mining Compact Commission, and Mr. Aaron Padilla, American Petroleum Institute, presented the work of the Contextual Narrative Working Group, which presented a version of the contextual narrative on which the Working Group had reached consensus. Mr. Conrad explained that a key challenge that the Working Group faced was in incorporating the many different types of information that provide useful context about the American extractives industries while not overburdening the report with too much detail and thereby making it unwieldy and difficult to understand. Mr. Conrad and Mr. Padilla summarized the approach that the Working Group pursued around some challenging areas of the Contextual Narrative outline:

- The Working Group had to reach agreement on the areas of the fiscal regime to include in scope and which ones to exclude. In order to simplify the presentation of some of this information, pathfinders (links) to external resources will be included, where possible.
- In order to illustrate the local implications of extractive sector activity, the Working Group recommended including a description of the size of the extractive industry in absolute terms and as a percentage of GDP in the highest government revenue counties for each of oil, natural gas, coal, copper, iron ore, and gold for the past 10 years and then continue to track these counties in the future in order to illustrate trends in production information over time.
- Employment information would also be included in the contextual narrative for the country as a whole, for MSG-prioritized states, and for the six counties described immediately above.
- Information related to revenue sustainability and resource dependence would be included for the country as a whole, for MSG-prioritized states, and for the six counties described immediately above.
- Responding to the International EITI guidelines to include information about beneficial ownership of extractive resources, the Contextual Narrative Working Group recommended describing the applicable state and federal laws that aim to prevent preferential treatment of private companies by government entities. The section would also describe the legal difficulties attendant to disclosing ownership of privately-held companies in the United States.
- The Working Group recommended against including reporting of revenues from transportation of extracted minerals since these revenues do not constitute a significant source of government revenue.

A copy of the Contextual Narrative outline is available here:

[http://www.doi.gov/eiti/FACA/upload/USEITIMSGContextual\\_Narrative\\_matrix\\_WG22Julyfinal.pdf](http://www.doi.gov/eiti/FACA/upload/USEITIMSGContextual_Narrative_matrix_WG22Julyfinal.pdf).

In response to Mr. Conrad's and Mr. Padilla's comments, MSG members asked the following questions and made the following comments:

- Ms. Danielle Brian, Project on Government Oversight, highlighted Betsy Taylor's input and perspective in the Contextual Narrative Working Group to push for a document that would be helpful and understandable to the general public in terms of understanding the extractives industries and their impact on local communities.
- Mr. Patrick Field, facilitator from the Consensus Building Institute, noted that the Independent Administrator would review the contextual narrative outline and report back to the MSG about which elements they may not be able to include in their scope of work.
- Some MSG members raised concerns with the protocol for selecting counties to be included in the contextual narrative (*response to these concerns provided by MSG members are indicated in italics*):
  - Mr. Michael LeVine, Oceana, suggested that relevant data may not be available for all of the highest-government-revenue counties. *In response, Mr. Padilla suggested that some flexibility be built into the protocol for identifying counties to profile in the contextual narrative such that, if relevant information is not available for one of the highest-government-revenue counties, a substitute county could be selected.*
  - Ms. Veronica Slajer, North Star Group, asked what would happen if a single county represents the largest government revenues in more than one represented extractive commodity and suggested that geographic diversity in representation is important. *In response, Mr. Padilla suggested that the commodities probably would not overlap, based on his knowledge about the significant areas of activity for the different commodities, but that if they do, the MSG should revisit this issue.*
  - MSG members noted that Louisiana has parishes in lieu of counties and that Alaska has boroughs in lieu of counties. *Members of the Contextual Narrative Working Group clarified that these jurisdictions would be included in place of counties in these states.*
  - Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, suggested that the MSG also communicate regularly with the Independent Administrator to resolve concerns such as the ones raised.
- The MSG approved the Contextual Narrative outline.

➤ **Decision: The MSG approved the Contextual Narrative outline.**

## 2.) Taxes and Reporting Period

Mr. Curtis Carlson, Department of the Treasury, reported that the Taxes and Accounting Period Working Group had agreed on the following points to recommend to the MSG (explanations of the Working Group's reasoning and further details about the mechanism are provided in sub-bullets):

- The accounting period for tax reporting would be the calendar year.

- The working group also explored using the Government's fiscal year and using variable fiscal years. The majority of firms currently use calendar-year reporting, thereby minimizing compliance costs for them, while the government is able to report based on the calendar year. Variable fiscal years may require adapted implementation.
- Tax payments would be reported on corporate taxes only and on payments based on consolidated tax groups.
  - Corporate income tax payments would be reported only by publicly- and privately-held C-corporations, not by pass-through tax entities (such as S-corporations, partnerships, and sole proprietorships).
  - Corporate income tax reporting would be based on a firm's consolidated group for tax purposes along with any stand-alone extraction-based subsidiaries.
- IRS transaction codes would be used to identify corporate tax payments.
  - The Working Group worked with the Internal Revenue Service (IRS) to identify 13 transaction codes that can be used to identify payments and refunds of corporate 'cash' tax payments.
  - Payments and refunds would be accounted for in the accounting period in which they were made. Penalties and interest payments would be included in the tax payments and would not be broken out separately.

A copy of Mr. Carlson's presentation is available here:

<http://www.doi.gov/eiti/FACA/upload/Accounting-Period-and-Corporate-Tax-Payments-Sept-MSG-to-DOI.pdf>.

In response to Mr. Carlson's presentation, Mr. Paul Bugala, Calvert Investments, asked whether Master Limited Partnerships would be exempt from tax reporting under the Working Group's proposal, and Mr. Carlson confirmed affirmatively that Master Limited Partnerships would be exempt as pass-through entities.

The MSG engaged in an extended discussion about the mechanics of how corporate tax payments could be collected by USEITI and included in reporting. This discussion is summarized below:

- Mr. Bob Reynolds, BP America, speaking on behalf of the industry sector, articulated a number of impediments to, and concerns regarding, corporate tax reporting and also put forward a proposal as to how reporting of corporate tax payments could be incorporated into USEITI:
  - Mr. Reynolds noted the following impediments and concerns:
    - Income taxes in the US have always been confidential.
    - Corporate tax payments are heavily audited, and the auditors are audited, to prevent the fraud that may take place in other EITI countries.
    - Companies follow very robust and detailed accounting procedures, and these accounting systems are externally verified.

- Consolidated income tax returns for companies represent both non-extractives businesses and also aspects of the extractives business that are not covered by EITI (such as refining and shipment of minerals). As such, reporting companies' consolidated income tax returns would not meet the goal of EITI to provide greater transparency about the extractives industry.
  - Participation in USEITI is voluntary.
- Mr. Reynolds put forward the following proposal for corporate tax reporting:
  - For the first USEITI report, to be submitted in December, 2015: encourage reporting of income taxes based on consolidated income tax returns for C-corporations. To facilitate compliance by companies, USEITI would allow them to report in one of two ways: based on the figures that the corporation has already disclosed/reported publicly through other venues (such as Securities and Exchange Commission filings) or to use the 13 IRS transaction codes identified by the Taxes and Accounting Period Working Group.
  - For the second USEITI report, to be submitted in December, 2016: by this time, the rulemaking around the Dodd-Frank Act should have moved forward and companies should also be more aware of reporting requirements under European Union regulations. As a result, they may be more comfortable disclosing tax payments under USEITI by that time.
  - With regards to reconciliation: the compliance by companies with a reconciliation request would likely be very low, and so the MSG needs to figure out how to best move forward with this issue.
- Ms. Zorka Milin, Global Witness and Yale Law School and member of the Taxes and Accounting Period Working Group, asked for clarification about the industry sector's concerns around reporting tax information. She noted that companies operating in other EITI countries, including American companies, have participated in corporate income tax reconciliation and also that similar concerns had not been raised by companies in the United Kingdom about the British candidacy application.
- Mr. Greg Gould, ONRR, asked for clarification about Mr. Reynolds' proposal to "encourage" companies to report tax payment data. He stated that decisions made by the MSG carry the weight of the full MSG and are not recommendations or suggestions that some parties comply with and some do not. He emphasized that the EITI International Secretariat has made it clear that reconciliation of taxes is required for validation and noted that, as long as USEITI has a process in place whereby it is working towards the end goal of getting more and more tax payments reconciled, then the International Board is likely to look at USEITI's efforts favorably. He added that USEITI does not have to have all corporate tax payments reconciled in the first report, but if USEITI can begin this

process, then it can demonstrate to companies that reporting is not a huge burden, and USEITI can move incrementally closer to full reporting in subsequent reports.

- Ms. Veronika Kohler, National Mining Association, explained that the industry sector anticipates that the majority of companies are not currently comfortable with reporting their tax information to USEITI and that the sector is therefore recommending a phased approach to allow companies to better see the benefits of USEITI over time and to see the implications of the Dodd-Frank and European Union reporting requirements. This is all with an eye to meeting the larger goals of EITI, which is to provide public access to information about the extractives sector.
- Mr. Aaron Padilla, American Petroleum Institute, added that when he and his counterpart at the Independent Petroleum Association of America (IPAA), Susan Ginsberg, explain EITI to companies that their organizations represent, they often are asked whether it makes sense to implement EITI in the United States since there are not significant concerns about corruption here. Mr. Padilla explains to these companies that the US effort to join EITI is an effort to improve transparency, improve the industry's public reputation, and to support US foreign policy objectives. While many companies understand this and can see the merits of EITI, they do not see the case around reporting and reconciliation of taxes, especially since taxes reported by a consolidated group often include non-extractives businesses and units, and often include production on non-public lands (neither of which are included in EITI's scope). As a result, many corporate Chief Financial Officers (CFOs) are resistant to reporting their tax payment information to USEITI. Mr. Padilla added that, while the International EITI Secretariat has said that tax reconciliation is required, the International EITI Board is the body that will ultimately decide whether to validate the US candidacy. He suggested that the US has a strong case to make as to why reconciliation of tax payments is not relevant in the American context.
- Ms. Susan Ginsberg, Independent Petroleum Association of America, echoed Mr. Padilla's comments by noting that companies pay income taxes based on revenues earned from both public and non-public lands, whereas EITI only covers public lands, and that tax information has always been confidential in the United States.
- Mr. John Harrington, ExxonMobil, added that, regardless of whether corporate tax reporting seems like a big deal or not, many companies are stridently opposed to it and the industry sector representatives on the MSG have no ability to compel reporting by the companies that would be needed for compliance. The only way to require compliance by companies in the US would be for the federal government to pass a law doing so. Until Section 1504 of the Dodd-Frank Act takes effect, many companies are unlikely to voluntarily report on their tax payments.
- Mr. Paul Mussenden, ONRR, agreed that the MSG cannot compel compliance. He suggested that MSG members consider their shared goals and aspirations for

USEITI, including the validation of USEITI reports, and accordingly articulate that the reporting of corporate taxes is a goal for the MSG.

- Ms. Danielle Brian, Project on Government Oversight, responded to a point made by Mr. Padilla that the history of the Minerals Management Service illustrated a significant history of corruption between the extractives industry and the US Government.
- Mr. Paul Bugala, Calvert Investments, reflected that the MSG would have to articulate its rationale for adapted implementation around this issue in significant detail to the International EITI Board.
- Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, suggested that a public outreach process to companies might be helpful, particularly highlighting the public commitment that some of the MSG-member companies have made around public disclosure of their tax payment information.
- Mr. Stuart Brooks, Chevron Corporation and EITI International Board Member, prefaced his comments by saying that he spoke as an EITI International Board Member and not as a Chevron official. He said that the US has a font of goodwill with the EITI International Board, stemming from USEITI's past presentations to the Board. He explained that, at the time that the US applied, there was a significant misunderstanding about whether EITI was voluntary or mandatory – EITI is always voluntary at the application stage, but thereafter it is mandatory. In all EITI countries, the EITI provisions are mandatory and companies are required to comply. Mr. Brooks suggested that because Americans are used to saying that you cannot compel various types of behavior, that has carried over into USEITI. Most International Board members, however, would be very surprised to hear this discussion about compliance with EITI provisions being voluntary. Mr. Brooks also spoke to the tax reconciliation issue, sharing his understanding about the difficulty of disaggregating consolidated tax payments under US corporate tax laws, although this income includes non-extractive activity and revenues generated on private lands. Mr. Brooks suggested that it would be very hard for most International Board members to understand these issues because the legal context is so different in other countries. He recommended communicating with the International Board about these issues as early as possible. He suggested that, while the US may need to seek adapted implementation around tax reconciliation, the MSG try to find a way to come to agreement.
- Mr. Jim Miller, Freeport-McMoRan and EITI International Board Member, agreed with Mr. Brooks' comments and added that the new EITI standards added greater flexibility to the program to accommodate circumstances like those of the United States. He echoed Mr. Brooks' suggestion to communicate with the International Board early about the American situation. He also explained that, although EITI is an international standard, each country administers its own program and that implementation is based on the will of the country program as applies to both domestic and multinational companies. Mr. Miller also committed to advocating for validation of the US report as a member of the

Board, along with the other American Board members, and to communicating with the other Board members about the American context and situation.

- In light of Mr. Brooks' and Mr. Miller's recommendation to communicate with the International Board early about the tax reporting and reconciliation issues, Ms. Veronika Kohler, National Mining Association, asked whether any representatives from USEITI would be attending the next International Board meeting in Myanmar. No USEITI representatives indicated that they intended to do so.
- Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, expressed discomfort with the idea of communicating to the EITI International Board that the USEITI MSG had reached an impasse on the tax reporting issue since the full MSG had only just begun discussing the issue.
- Mr. Mike Flannigan, Peabody Energy, suggested that the USEITI MSG should communicate soon to the International Board that the MSG was unclear about the implications of the tax reporting issue during its initial application.

➤ **Decision: The MSG approved the use of the calendar year as the reporting period.**

### 3.) Revised 2014 USEITI Work Plan

Mr. Chris Mentasti, ONRR, presented an updated USEITI Workplan on behalf of the Workplan Working Group. He explained that the International EITI Board had requested that the USEITI MSG update its workplan and that the MSG is required to update its workplan annually under EITI guidelines. Mr. Mentasti proceeded to outline the workplan narrative as well as the framework of the workplan itself. The outline reviewed by Mr. Mentasti can be found in his presentation, on slides 3 and 4: <http://www.doi.gov/eiti/FACA/upload/Workplan-WG-Presentation.pdf>.

The Revised 2014 USEITI Workplan itself can be found at:

[http://www.doi.gov/eiti/FACA/upload/Workplan\\_Draft\\_for\\_MSG\\_-\\_complete\\_package.pdf](http://www.doi.gov/eiti/FACA/upload/Workplan_Draft_for_MSG_-_complete_package.pdf).

The MSG approved the revised workplan.

➤ **Decision: The MSG approved the Revised 2014 USEITI Workplan.**

### 4.) Company and Project Level Reporting

Mr. Paul Bugala, Calvert Investments, presented the recent work and the recommendations of the Project and Company Level Reporting Working Group regarding project- and company-level reporting. After reviewing the working group members and the process that the working group has followed, Mr. Bugala highlighted the following issues that the working group has explored:

- Identify specifics regarding Trade Secret Act/competitive disadvantage concerns
- How the Dodd-Frank Section 1504 process affects the decision on project level

- The potential to achieve equivalency with existing EU law
- The EITI process and validation and the precedents the USEITI process may set
- Develop stronger understanding of how USEITI data will be used at a state and local level
- How the level of reporting may affect the complexity and use of the USEITI reconciled report

Mr. Bugala outlined the following conclusions and outcomes from the working group's discussions:

- In most cases, the prospect of "competitive harm" under the Trade Secrets Act is not seen as a significant impediment to the disclosure of lease-level, year old data, by company and by commodity.
- USEITI may be best served by waiting to define "project" until after the Securities and Exchange Commission (SEC) has released its rules under Section 1504 of the Dodd-Frank Act because inconsistent definitions could pose a compliance hurdle for USEITI.
- Similarly, there is a risk that USEITI's definition for "project" will be inconsistent with the definition under European Union (EU) law, which will apply to all companies domiciled, operating, or listed in the EU.
- Under the International EITI standard, reporting at the project level is required, provided that it is consistent with SEC rules and EU law.

Finally, Mr. Bugala presented the following recommendations from the Project and Company Level Reporting Working Group:

- The USEITI project-level definition must be consistent with the EITI Standard, which requires consistency with SEC Section 1504 rules and EU law, and it should support efficient global reporting.
  - The United Kingdom's project definition is due around October 2014 as part of its implementation of the EU law and, if this is released on schedule, it could provide some guidance for how USEITI should formulate its definition. (Norway will also begin project-level reporting consistent with the EU law in early 2015.)
- Additional information is needed on how reporting can be most useful to the public (while maintaining consistency with the EITI standard)
- Additional information is also needed about what types of reporting and disclosure could constitute competitive harm, from both companies included in the initial USEITI report and from companies included in the unilateral disclosure report.

A copy of the presentation slides used by Mr. Bugala can be found here:

<http://www.doi.gov/eiti/FACA/upload/P-C-WG-Process-and-Recommendation-Presentation-090414-Final.pdf>.



In response to Mr. Bugala's presentation, MSG members asked the following questions and made the following comments:

- Mr. John Harrington, ExxonMobil, clarified that the industry sector continues to have concerns about competitive harm caused to firms due to project-level reporting, but that, upon examination, these concerns were not as significant as initially anticipated.
- In response to a question from Ms. Danielle Brian, Project on Government Oversight, about the level of granularity the government would use for unilateral disclosure, Mr. Gould stated that the government would report to a level that does not break the law and to a level that the MSG can agree upon. He added that the unilateral reporting via the Data Portal would be at the company level for the first year.
  - Ms. Brian responded that the civil society sector would be very enthusiastic to have reporting at the lease level.
  - Ms. Veronika Kohler, National Mining Association, added that the industry sector would support whatever level of reporting the MSG agrees upon and that the government is able to provide.
- MSG members discussed the importance of reconciliation of data:
  - Mr. Bugala stated that, while the government's unilateral disclosure will be a very important source of transparency, reconciliation of data is important because it is based on the EITI Standard, which is important for public trust and accountability as well as being required for validation.
  - Mr. John Harrington, ExxonMobil, stated that reconciliation would not be the center of USEITI's report, as it is in some countries. As such, USEITI should reconcile to the extent that is helpful without being overly onerous or costly.
- In response to a question from Mr. Paul Mussenden, ONRR, about the implications of possible delay in the release of Section 1504 of the Dodd-Frank Act of the relevant European Union rules, both Mr. Bugala and Mr. Harrington indicated that USEITI may have to figure out how to proceed, but - as stated in the findings of the working group - the USEITI project-level definition must be consistent with the EITI Standard, which requires project-level disclosure provided it is consistent with SEC Section 1504 rules and EU law.
- In response to a question from Ms. Susan Ginsberg, IPAA, about the government's understanding of the legal standard under the Trade Secrets Act for avoiding competitive harm to companies through disclosure, Mr. Lance Wenger, DOI Office of the Solicitor, explained that, while the Office is still in a fact-finding phase, it has been able to identify that release of company-level data is unlikely to cause substantive competitive harm. Release of more granular data is still under investigation. Ms. Debbie Tschudy, ONRR, added that the Department of the Interior needs to hear from the companies whose data may be released at a more granular level whether such data would cause substantive competitive harm when it is combined with other publicly-available data. Even data that is released at the company level and delayed by one year has the

potential to cause substantive competitive harm if, for example, the company holds only one lease or produced for only one month during the previous year.

- Mr. Michael LeVine, Oceana, noted that, while the Working Group has mostly thought about what information is possible to report, what information is required to be reported under the EITI standard, and what information is legally-permissible to report under US law, it would also be helpful to think about what information would actually be useful to the public if it is reported.
  - Ms. Danielle Brian, Project on Government Oversight, noted that her organization has circulated a survey among its members to better understand what types of data disclosure would be useful to them.
  - Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, added that data needs may vary by commodity and by region. Once USEITI has some data and releases it, data queries and requests can also help to identify what types of data are useful and are needed by the public.

## **D.) Communications Subcommittee Recommendations**

### **1.) Communications Plan**

Ms. Veronika Kohler, National Mining Association, introduced a draft version of the Communications Plan and asked people to review it following the meeting and get back to the Communications Subcommittee with responses to the following questions:

- Are there relevant stakeholder groups that are missing?
- For the included stakeholder groups, are there any tools that should be added?
- Are there other partners that should be included in outreach and communications activities?
- Other comments?

A copy of the draft Communications Plan is available here:

[http://www.doi.gov/eiti/FACA/upload/Communications\\_Plan\\_August\\_1\\_2014.pdf](http://www.doi.gov/eiti/FACA/upload/Communications_Plan_August_1_2014.pdf).

Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, noted that USEITI could make presentations at various upcoming academic and civil society conferences but that the planning for this would generally need to be done six months in advance of the conference in order to secure a speaking or panel slot.

### **2.) Source of Dear Reconciler Letter**

Ms. Kohler raised the outstanding issue of who would initiate communication with payers (companies) that would be asked to participate in USEITI reporting. MSG members made the following comments regarding this issue:

- Mr. Greg Gould, ONRR, noted that this issue has already been discussed extensively and that the government sector continues to feel that the industry sector is best positioned to reach out to the other companies that will be asked to participate in reporting to ask for their participation. Since the MSG is a multi-

stakeholder body, all members should be committed to participating in its activities.

- Ms. Susan Ginsberg, Independent Petroleum Association of America, said that she can inform companies that are part of her trade association about the EITI and can articulate the benefits of participating in the program, but that she cannot comfortably tell them what to do in terms of providing information. Companies ask her “who started this” and she responds by telling them that President Obama initiated USEITI and that the Department of the Interior is implementing it. In this context, it is important that the government stand behind its actions.
- Mr. Neil Brown, The Lugar Center, suggested that the government could perform initial outreach and then the industry sector could perform follow-up outreach. He also asked whether the letter to companies could be sent on behalf of the MSG as a whole.
- Mr. Aaron Padilla, American Petroleum Institute, advocated for the initial communication to come from the Secretary of the Interior because USEITI was initiated by the US Government. Furthermore, the MSG serves as a Federal Advisory Committee to advise the Secretary of the Interior, not to make decisions independently. He also noted that, at a recent forum, Secretary of the Interior Jewell was received very positively by the many extractive industry representatives who were present, perhaps owing to her background in the business sector and her history in the oil industry.
- Ms. Danielle Brian, Project on Government Oversight, suggested that having some communication come from Rhea Suh, Assistant Secretary of the Interior, and some coming from Secretary Jewell might be a cause for confusion.
- Mr. Paul Mussenden, ONRR, noted that USEITI had significant success in performing outreach on Capitol Hill and to the general public when MSG members from all sectors participated in that outreach.
  - Ms. Susan Ginsberg, IPAA, agreed that those efforts had been successful, but differentiated between those efforts and the current question by suggesting that the request to companies to participate in USEITI would come most clearly and most strongly from the US Government.
- Mr. Brent Roper, Rio Tinto, suggested that it may be beneficial to tailor letters to different recipients, with, for example, different letters sent to larger companies versus smaller companies.
- Mr. Greg Gould, ONRR, stated that the content of the letter would be important in helping to determine whether it could appropriately be sent out by the US Government. As such, he asked the Communications Subcommittee and the Dear Payor Working Group to develop the Dear Reconciler letter such that it can be reviewed by the DOI Solicitor’s Office.
  - Ms. Danielle Brian, Project on Government Oversight, suggested that it may be more efficient to have the DOI Solicitors guide the Working Group

regarding how the letter should be framed and what it should say such that the Government can send it out.

- Mr. Greg Gould, ONRR, agreed to have the DOI Solicitors work closely with the Communications Subcommittee and the Dear Payor Working Group to develop the Dear Reconciler letter such that the US Government will be able to send out the letter.
  - In response to a question from Ms. Johanna Nesseth Tuttle, Chevron Corporation, about the mechanics of collecting information from reporters (companies), Mr. Gould explained that the Independent Administrator would conduct this process of collecting information, since the government's figures are also being reconciled as part of the USEITI process.
  - In response to questions about the Paperwork Reduction Act, Mr. Lance Wenger, DOI Office of the Solicitor, explained that the Act could apply whether or not the government sends out the letter directly and whether or not a direct request for information is made in the letter. The real trigger for the Paperwork Reduction Act is the content of the letter. Mr. Gould added that, if the Act is triggered, the Government will have to proceed through a multi-month process, including filing a Federal Register notice. In addition, the Government will need to determine whether the current authorization under the Paperwork Reduction Act can cover the request or whether a new authorization would be needed.
- **Decision: DOI will work with the Communications Subcommittee and its attorneys to determine how to frame the Dear Reconciler letter such that it can be sent out under Secretary Jewell's name**

### 3.) Communications Materials

Mr. Jerry Gidner, Department of the Interior, introduced a package of Outreach Briefing Materials prepared by the Communications Subcommittee. He briefly reviewed the following materials:

- USEITI Key Milestones & Events ([PDF](#))
- MSG List of Members ([PDF](#))
- Description of USEITI Report ([PDF](#))
- USEITI Outreach Presentation ([PDF](#))
- USEITI Frequently Asked Questions ([PDF](#))
- Benefits of USEITI ([PDF](#))
- USEITI Fact Sheet ([PDF](#))

- **Decision: The MSG approved the Communications materials prepared by the Communications Subcommittee, with edits as discussed at the meeting.**

#### D.) DOI Online Data Portal

Ms. Michelle Hertzfeld, General Services Administration - 18F, presented the work that her team has been doing to create an Online Data Portal that will provide access to the information and data published by USEITI. The Data Portal is currently under development and is slated for a December 2014 launch.

Ms. Hertzfeld described 18F's iterative, closed-loop design process to develop and refine the products they create. The process focuses on using qualitative and quantitative methods to test approaches to meeting user needs. For creating the Data Portal, a team from 18F has been working with various people from the MSG, MSG support staff, and the USEITI Secretariat to understand user needs and to refine the Data Portal.

Ms. Hertzfeld highlighted a few elements of the under-development Data Portal, which can be found here: <http://18f.github.io/doi-extractives-data/>. Elements of the data portal include the following:

- Representation of government revenues by extractive commodity, by year
- How onshore and offshore revenues are allocated
- Background information about different commodities
- Extractive resources and associated revenues by state / region
- The ability to filter and download data to allow for analysis
  - Filter by commodity
  - Filter by company

Ms. Hertzfeld explained that, while the site is still under development, people can provide feedback at: <http://goo.gl/HOHBnr> and can see the feedback that other users have provided here: <http://goo.gl/jgNldV>.

A copy of Ms. Hertzfeld's presentation slides is available here:  
<http://www.doi.gov/eiti/FACA/upload/EITI-MSG-Alpha-Demo-1.pdf>.

In response to Ms. Hertzfeld's presentation, MSG members asked the following questions:

- Mr. Bob Reynolds, BP America, asked whether the Data Portal is intended to be both a graphical representation of data and also a query set. Ms. Hertzfeld responded affirmatively, although she clarified that the current dummy data set is smaller than a true query set.
- Mr. Paul Bugala, Calvert Investments, asked whether the Data Portal will support metadata. In response, Ms. Hertzfeld said that that is the direction that her team is moving in, but this is yet to be determined.

#### IV. Day 1 Public Comment: September 9, 2014

The following public comments were made on September 9, 2014:

- Hi my name is Diana Withen and I'm a high school biology teacher in part of southwest Virginia, Wise County. And I'm here today to tell you that what you're doing is very important because - I don't know if anybody knows much about Weiss County Virginia, but it's a coal town. We've been mining coal in Weiss County for over 100 years. Strip-mining the county for the past few decades. We blow up and maybe the first 50 feet or 100 feet of a mountain go in for fencing coal - and I'm sure most of you guys know that the electricity power in this town, some of it is coming from coal, some from our county. In Weiss County we've lost 25% of our mountains already. And when they blow the mountains they then will dump the overburden into the valleys below, which is where our streams are. I have this shirt on today because we're in DC trying to get the Department of Interior, the Army Corps, anyone who will listen to us to know that we really love our mountains, and we feel like we deserve clean water. We have the highest rates of cancer and the highest rates of asthma in the state of VA and probably a lot of it can be traced back to the slinging of arsenic mercury, things like that that's getting into our water. I'm hoping that something like this might allow our county officials and local officials to advocate more effectively for local residents. A lot of people focus on what they're getting from the industry – which we do get tax dollars and subsidies and stuff from the coal industry, but a lot of times I don't think they look at the other side, which are the health costs. The costs: the fact that we can't get other industries to come in now, even Alcoa, which is a coal company, they didn't put their headquarters in our town, in Weiss county, which is where the majority of the mining is going on. They put it to the county south of us, Washington county, which has no coal mining and has got clean water. It makes it hard for us to recover from the extractive industry. We have a lot of sick people there. I know several people, several teachers at my school and students who have cancer - brain tumors. So I'm really happy you guys are here today to figure out a way that we can clearly see what's going on when we chose to do these kinds of extractive activities. Thank you.
- Hello my name is Jane Braham and I also come from a part of southwest Virginia where they mine coal. I am a native of there - I haven't always lived there but I returned to the area later in life to see what they had done to my mountains. Ever since then, I've been involved in the attempt to change that. And so this is my 7<sup>th</sup> year coming up here to lobby and to protest and rally around and stop it. Because it's not only left poisonous water, it's left devastated mountains in the most biodiverse places in the country, and one of the most biodiverse places in the world – as a matter of fact, second only to the Amazon Rainforest. There is just a wealth of life there that has been destroyed forever. Despite all of the wealth that has left my community, it still remains the poorest in the state. All of the coal extracting counties are the poorest in the state of VA and that's true of all the states where coal is extracted – and I don't need the full 3 minutes for this, because I didn't come here prepared with a speech. I'm just telling you from my heart that I'm very glad to see this discussion begun. I intend to petition my

state and county to absolutely get behind this effort and I thank you and look forward to the future being a brighter place.

- Hi, I'm Lauren Bush, and I work on state-wide organizing for community empowerment in the state of Tennessee. I am from the middle of Tennessee, near Nashville and Cookeville. My organization was founded to respond to pollution from mountaintop removal and now we have hydraulic fracturing on the Cumberland Plateau. We only have one rheumatologist and one internist in our local area to help people who have been impacted by this extraction. Thank you for having this data available and we hope to see this benefit people on the Cumberland Plateau and the state. Earlier this year, we had community bonds available - they were available by county, but people were not aware these funds were available. So, I hope with the renewable energy section of this website this helps local communities be informed of what resources are available of making their communities more energy efficient.

The meeting was adjourned on September 9 at 4:30 pm.

## **V. Day 2 Presentations and Key Discussion Points: September 10, 2014**

Mr. Paul Mussenden, acting Designated Federal Officer (DFO), U.S. Department of the Interior (DOI), opened the meeting at 9:30 am and welcomed participants. He reviewed the agenda for the day and meeting attendees identified themselves and their affiliations.

### **A.) Inception Report Overview and Discussion**

#### **1.) Introduction**

Mr. Paul Mussenden, ONRR, introduced the Independent Administrator team members present at the MSG meeting: Greg Arend, Jane Kapral, and Alex Klepacz, all with Deloitte. Mr. Mussenden recounted that the Independent Administrator was chosen in August 2014 as a result of a procurement process and he thanked various people who participated in that effort.

#### **2.) Presentation from Independent Administrator**

Mr. Greg Arend, Ms. Jane Kapral, and Mr. Alex Klepacz, all with Deloitte, introduced themselves and thanked MSG members for inviting them to attend the MSG meeting.

Ms. Kapral provided an overview of the USEITI team from Deloitte, which includes a number of managers as well as staff. She also highlighted the role of the Advisory Board, composed of Deloitte staff with expertise in other EITI initiatives around the world as well in implementation of Dodd-Frank Act requirements. She added that additional people can be added to the Advisory Board, as needed. Ms. Kapral also noted the

presence of a Quality Review team to backstop the main Independent Administrator team's work.

Ms. Kapral outlined the Independent Administrator team's communication strategy, consisting of weekly internal meetings, meetings as needed with the Advisory Board, and meetings with the USEITI Secretariat, full MSG meetings, and Subcommittee meetings as needed. She also reviewed Deloitte's understanding of the decisions the MSG made around materiality, scope, and the framework of the contextual narrative.

Ms. Kapral proceeded to review the scope of the Inception Report that her Independent Administrator team will be producing, including the following elements:

- Background information
- Contextual and other non-revenue information
- Payment and revenue information
- Industry and other government entities to include
- Draft reporting template
- Leading practices on procedures
- Advice on credibility of data
- Safeguarding confidential information
- Documentation

Ms. Kapral noted that the Independent Administrator is not empowered to make decisions unilaterally and instead will take direction from the USEITI MSG and the Co-Chairs.

Mr. Kapral also provided a proposed outline for the Inception Report, consisting of the following sections:

- Executive Summary
- Background
- Approach and Methodology
- Reconciliation Scope
- Data Reliability and Certification
- Findings and Recommendation
- Glossary and Abbreviations
- Draft Reporting Template

Ms. Kapral reviewed the Independent Administrator's data collection and analysis methodology, consisting of collecting data and information from reporting companies and the government, analyzing the numerical data and investigating any discrepancies, and lastly reporting out to the public with both a contextual narrative and a reconciled report.

Ms. Kapral reviewed the Independent Administrator's schedule for completing the Inception Report, due on December 2, 2014.



Finally, Mr. Klepacz identified the following requests for the USEITI Secretariat and for the MSG:

- Facilitate discussions between the IA and the sectors to answer specific questions related to the inception report
- Provide a full list of all industry and government reporting entities to be included in scope
- Set up workshops between the IA and the sectors to provide insight to data, processes, procedures, observations, expectations, and concerns
- Provide input on any known specific anticipated risks or challenges with implementation
- Provide input on format of data reporting template
- Provide a detailed meeting schedule and availability of MSG Sub-Committees through December 2014 Quarterly MSG meeting
- Provide input on available tax reporting information
- Provide input on USEITI report template
- Develop and maintain the Data Portal for gathering reporting entity data and disbursing results

Additional detail about the summarized presentation can be found in the Independent Administrator team's presentation slides, available here:

<file:///Users/tushar/Downloads/IA%20Inception%20Report%20Overview%20PresentationFINAL9.10.2014.pdf>.

In response to the Independent Administrator team's presentation, MSG members asked the following questions and made the following comments:

- Mr. Greg Gould, ONRR, explained that the desired communications protocol between the MSG and the Independent Administrator would be for the MSG communicate through the Co-Chairs to the Independent Administrator and for the Independent Administrator to communicate with the MSG through the USEITI Secretariat.
- Mr. Neil Brown, The Lugar Center, requested transparency and visibility of communication between the MSG and the Independent Administrator.
  - Mr. Greg Gould, ONRR, expressed support for this and explained that transparency is why the Co-Chairs would be included in all communications.
  - Ms. Veronika Kohler, National Mining Association, clarified that communication concerning contractual issues would be handled directly between the Independent Administrator and the USEITI Secretariat, without the involvement of the Co-Chairs or the MSG.
- In response to a question from Mr. Paul Bugala, Calvert Investments, about whether relevant Subcommittees and Working Groups would be interacting with the Independent Administrator before the issuance of the Independent

Administrator's Inception Report, Mr. Greg Gould, ONRR, responded affirmatively, explaining that guidance from the Subcommittees and Working Groups should shape the Inception Report.

- Ms. Danielle Brian, Project on Government Oversight, requested to see the conflict of interest disclosure information that Deloitte submitted and asked specifically about the presence of staff on the Independent Administrator team who are members of Deloitte's oil and natural gas practice.
  - Mr. Greg Arend, Deloitte, indicated that Deloitte submitted a Conflict of Interest Mitigation Plan as part of the application process to the Department of the Interior's Contracting Officer and suggested that the Contracting Officer could answer further questions about conflicts of interest.
- Ms. Danielle Brian, Project on Government Oversight, suggested that the Civil Society Sector was at a disadvantage in working with the Independent Administrator because Deloitte had worked extensively with extractives companies and with governments.
  - Mr. Greg Arend, Deloitte, responded that Deloitte has served a number of nonprofits and international organizations around the world and offered to provide a list of these clients to the MSG.
  - Mr. Neil Brown, The Lugar Center, suggested that some Deloitte staff who have experience serving civil society organizations be added to the Independent Administrator's Advisory Board. Mr. Arend endorsed this suggestion.
- Ms. Veronika Kohler, National Mining Association, suggested adding the following item to the list of "asks" presented by Deloitte: inquiring how companies already report information to the government.
  - Mr. Alex Klepacz, Deloitte, noted that the Independent Administrator would be collecting information about any data that companies report to ONRR and other government agencies, but that his team may also need to ask for additional information to avoid collecting information duplicatively as much as possible.
- In response to a question from Mr. Neil Brown, The Lugar Center, about whether the Independent Administrator intended to have an integrated data portal, Mr. Greg Arend, Deloitte, said that was still to be determined.
- Mr. Neil Brown, The Lugar Center, inquired as to whether the workshops that the Deloitte team mentioned during its presentation would employ the same transparency standards as the Subcommittee meetings.
  - Ms. Jane Kapral, Deloitte, responded that the "workshops" mean that members of the Independent Administrator team would attend existing Subcommittee and Working Group meetings and would adhere to existing protocols for those bodies.
  - Mr. Brown suggested that the Co-Chairs review the transparency and communication protocols for the Subcommittee and Working Group meetings and revise them, as needed, to promote transparency.

- Ms. Danielle Brian, Project on Government Oversight, encouraged the MSG to continue to strive for greater transparency than is required by the Federal Advisory Committee Act (FACA).
- Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, suggested that, from the perspective of civil society, the key issue may not be avoiding conflicts of interest, necessarily, as much as developing trust. She stated that she needs to be able to answer questions from members of the public about whether the Independent Administrator consists of people who they can trust. Reading from page 10 of the Terms of Reference for the Independent Administrator (available here: [http://www.doi.gov/eiti/FACA/upload/FINAL\\_USEITI\\_TOR\\_04-23-14-2.pdf](http://www.doi.gov/eiti/FACA/upload/FINAL_USEITI_TOR_04-23-14-2.pdf)), Ms. Taylor inquired whether the Independent Administrator team features expertise in areas such as “Regional development, domestic natural resource markets and energy production and use,” “Planning and public administration specializing in taxes, revenue and natural resource policy,” “Labor and workforce assessment,” and “Sustainable development, democratic natural resource governance and public involvement.”
  - Mr. Greg Arend, Deloitte, responded by noting that both he and Ms. Kapral are Certified Public Accountants and that both their personal reputations and the firm’s reputation are on the line. He also explained that, particularly in the post-disaster work that he has done, the focus is on the community and how to help the community recover from the homes and jobs that are lost. Deloitte would not want to be in the middle of any controversies.
- Mr. David Goldwyn, Goldwyn Global Strategies LLC, inquired where different members of the Independent Administrator team are located and whether a Chinese wall could be erected between the members of the Independent Administrator team and the headquarters of Deloitte’s oil and gas practice.
  - Mr. Greg Arend, Deloitte, explained that Ms. Kapral is in Deloitte’s Denver office, Mr. Klepacz is in Washington DC, and that he himself recently relocated from Washington, DC to Tulsa. Deloitte’s oil and gas practice is headquartered in Houston. He stated that the Conflict of Interest Mitigation Plan (available here: <http://www.doi.gov/eiti/FACA/upload/Deloitte-Conflicts-of-Interest-Mitigation-Plan.pdf>) that Deloitte submitted articulates how the firm will manage conflicts of interest, including staff who have recently served oil and gas companies.
- In response to a questions from Mr. David Goldwyn, Goldwyn Global Strategies LLC, about whether the Independent Administrator would conduct integrity checks on the data that is submitted, Mr. Alex Klepacz, Deloitte, explained that the Independent Administrator team would need to investigate further what would be required and what would be possible before commenting on this.

## B.) Independent Administrator Engagement

### 1.) Roles, Responsibilities and Communication

Mr. Bill Blake and Ms. Sherri Glover, both DOI Office of the Secretary, made a presentation concerning the legal boundaries of the MSG's engagement with the Independent Administrator. Mr. Blake noted that the collaborative nature of both the USEITI MSG and of the contract increased the risk of both the MSG and the Independent Administrator overstepping their boundaries.

Mr. Blake and Ms. Glover reviewed the main areas of concern for procurement integrity. In particular, decisions regarding the substance of contract documents, structure, award, scope and, contractor performance, etc. must remain the responsibility of DOI and contract modifications can only be made by the contracting officer. That being said, technical advice from the MSG may be requested and given throughout the life of the contract as long as the exchange is within the bounds of applicable statutes and regulations pertaining to procurement and Federal Advisory Committees. In addition, there is no prohibition on open, two-way communication between the MSG and the Independent Administrator.

A copy of the presentations slides used by Mr. Blake and Ms. Glover can be found here: [http://www.doi.gov/eiti/FACA/upload/SOL-CO-Presentation-for-USEITI-Contracting\\_9\\_10\\_14.pdf](http://www.doi.gov/eiti/FACA/upload/SOL-CO-Presentation-for-USEITI-Contracting_9_10_14.pdf).

MSG members asked the following questions in response to Mr. Blake's and Ms. Glover's presentation; *responses are indicated in italics*:

- Ms. Danielle Brian, Project on Government Oversight, requested an opportunity to review the Conflicts of Interest Mitigation Plan submitted by the Independent Administrator.
  - *Ms. Glover indicated that the approvals process to allow this to occur was already in process.*
  - Editor's note: Since the time of the MSG meeting, a copy of the Mitigation Plan has been posted online at: <http://www.doi.gov/eiti/FACA/upload/Deloitte-Conflicts-of-Interest-Mitigation-Plan.pdf>
- Ms. Danielle Brian, Project on Government Oversight, requested elaboration on what types of communication are not allowable between the MSG and the Independent Administrator.
  - *Mr. Blake and Ms. Glover responded that, principally, if the MSG asks the Independent Administrator to perform additional work that goes beyond the scope of the contract, then the US Government would need to decide whether to pursue a contract modification process with the Independent Administrator. The Independent Administrator should articulate to the MSG when the requests being made of it go beyond the current scope of work.*

- Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, asked for clarification about the provision in the Conflicts of Interest Mitigation Plan by which the Independent Administrator will not include people on the USEITI Independent Administrator team who have recently served the reporting entities.
  - *Ms. Glover responded that the provision proscribes the Independent Administrator from including any persons in a full-time capacity on the USEITI project who have previously served the reporting entities within the last two years.*

## 2.) Terms of Reference Review & Agreement

Mr. Greg Gould, ONRR, referenced the Terms of Reference for the Independent Administrator (document available here: [http://www.doi.gov/eiti/FACA/upload/FINAL\\_USEITI\\_TOR\\_04-23-14-2.pdf](http://www.doi.gov/eiti/FACA/upload/FINAL_USEITI_TOR_04-23-14-2.pdf)) and asked the MSG to endorse the selection of Deloitte as the Independent Administrator.

Ms. Danielle Brian, Project on Government Oversight, raised objection with the speed at which the MSG was being asked to endorse the selection of the Independent Administrator. She expressed appreciation for the opportunity to review the Conflicts of Interest Mitigation Plan submitted by Deloitte and added that the Civil Society Sector was willing to conditionally endorse Deloitte as the Independent Administrator as long as Deloitte adds people to their USEITI core team with background and qualifications related to development issues and also abides by the policy outlined in the Conflicts of Interest Plan to staff their USEITI team only with people who have not served the reporting entities during the past two years.

Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, stated that the Conflicts of Interest Plan actually states that Deloitte will not staff the USEITI team with anyone who has served the reporting entities during the past three years (not two).

Mr. Michael LeVine, Oceana, suggested that, going forward, it could be helpful to include necessary process items and decision-making by the MSG, such as endorsing Deloitte as the Independent Administrator, directly in the Meeting Agenda so that MSG members are all aware of them. In response, Mr. Greg Gould, ONRR, endorsed that suggestion.

- **Decision: The MSG provisionally endorsed Deloitte's appointment as the Independent Administrator, contingent on Deloitte presenting to the MSG qualifications of additional IA core team members with experience with development issues.**

## 3.) Project Plan

Mr. Greg Gould, ONRR, explained the project plan and timeline for the Independent Administrator's work through the submission of the first USEITI report, in December

2015. A high-level summary of Mr. Gould's presentation is provide here, with additional detail about the Project Plan available in his presentation slides:

[http://www.doi.gov/eiti/FACA/upload/IA-MSG-2014\\_2015-Project-Plan.pdf](http://www.doi.gov/eiti/FACA/upload/IA-MSG-2014_2015-Project-Plan.pdf).

High-level summary of the Independent Administrator's project plan:

- The Independent Administrator conducts preliminary analysis and creates Inception Report between September 2014 and December 2014.
- The Independent Administrator collects data and recommends a plan for online data reporting and for the contextual narrative in January and February, 2015.
- The Independent Administrator performs its initial reconciliation of data exercise between March 2015 and June 2015.
- The Independent Administrator investigates discrepancies and creates the first draft of the first USEITI report between July 2015 and October 2015.
- The Independent Administrator submits the final version of the first USEITI report in December 2015.

In response to Mr. Gould's presentation, MSG members asked the following questions and made the following comments; *responses from Mr. Gould are provided in italics*:

- Mr. John Harrington, ExxonMobil, suggested that it may be ambitious to produce the first draft of the Reconciliation Report by May 2015 as it may take some time to get the required information from reporting companies.
  - *Mr. Gould responded by emphasizing that that is why the work needs to begin as soon as possible.*
- Mr. Paul Bugala, Calvert Investments, asked whether the draft reporting template should really be considered a "draft" document because, once the MSG endorses it at the December MSG meeting, it will be sent out by the Independent Administrator to collect information from reporting companies.
  - *Mr. Gould agreed that the reporting template would be sent out following the December MSG meeting but that the intention is to have the Subcommittees vet the reporting template before the December meeting. Additionally, in order to minimize duplication of reporting, the intention is to use existing government report forms, to the extent possible.*
- Ms. Betsy Taylor, Virginia Polytechnic Institute and State University, suggested that a formal public comment period be opened starting in March 2015 to solicit input from the public about how the reporting of information, both through the contextual narrative and in the form of financial data, can best serve their needs.
  - *Mr. Gould noted that the public can comment any time on the USEITI process, including by submitting comments through the Data Portal, and so the Department of the Interior has not been anticipating opening a formal public comment period.*
- Ms. Danielle Brian, Project on Government Oversight, pointed out that the contextual narrative is referenced only once in the Project Plan slides that Mr.

Gould presented and that writing the contextual narrative will likely take much more time than will the reconciliation.

- *Mr. Gould responded that the development of the contextual narrative would be an iterative process and that the USEITI Secretariat would revise the project plan to make sure that the development of the contextual narrative and its integration into the full USEITI report is fully articulated.*
- Ms. Johanna Nesseth Tuttle, Chevron Corporation, suggested that the Communications Subcommittee begin developing a launch and outreach strategy for the release of the first USEITI report in December 2015.

### C.) 2015 Implementation Timeline

Mr. Greg Gould, ONRR, reviewed the USEITI 2015 Implementation Timeline/Milestones. He highlighted the key topics and decisions that the MSG would need to make in each of the four meetings scheduled for 2015 in order to successfully submit the first USEITI report in December 2015.

A copy of the USEITI 2015 Implementation Timeline/Milestones is available here:  
<http://www.doi.gov/eiti/FACA/upload/USEITI-2015-Implementation-Timeline-1.pdf>.

## VI. Day 2 Public Comment

The following public comments were made on September 10, 2014:

- Mark Hays, Global Witness:  
Thank you for the opportunity to speak here today. My name is Mark Hays. I'm a Senior Advisor with Global Witness. I'd like to highlight a significant issue – disclosure of the beneficial owners of companies – and offer some recommendations on how USEITI stakeholders may best address this issue.

As you may know, The International EITI Board agreed that, following a period of testing and learning, the EITI should in the future require disclosure of the beneficial ownership of oil, gas and mining companies operating in implementing countries, given the importance of beneficial ownership disclosure in promoting transparency and serving as a check against corruption.

Disclosure of companies' beneficial ownership helps citizens know who actually owns and ultimately benefits from the activities of those companies that have acquired the rights to extract oil, gas or minerals in their country. Otherwise, opacity regarding who owns those companies can contribute to corruption, money laundering and tax evasion in the extractives sector.

Fortunately, there is progress being made on beneficial ownership disclosure within other EITI member states that USEITI stakeholders should consider. At least 12 other countries have begun pilot projects on beneficial ownership

disclosure. In particular, the UK MSG recently adopted a recommendation that beneficial ownership disclosure should be included within the UK EITI, and that condition was subsequently included in the UK's candidacy for EITI membership.

Action in the U.S. is also laying the groundwork for further adoption of beneficial ownership transparency. Through its commitments under the G8, (now G7), the Obama Administration has committed to advocate for legislation that would require meaningful disclosure of beneficial ownership information at the time an American company is formed. Additionally, commitments on the collection and disclosure of company beneficial ownership information are included in the Administration's Open Government Partnership National Action Plans. Lastly, transparency regarding the real, beneficial owners of companies is so important to our national security that President Obama also included a commitment to work with Congress on this issue in his Strategy to Combat Transnational Organized Crime.

While there are many steps still yet to be taken, beneficial ownership disclosure is positioned to become a key part of the reporting requirement for EITI, and developments in other jurisdictions suggest it may become standard practice for other business sectors in the future as well.

We recognize here that the draft version of the USEITI Contextual Narrative currently addresses beneficial ownership by recommending that guidance is given to parties participating in reporting regarding applicable federal and state laws that address disclosure of beneficial ownership of private companies. While we recognize that efforts by the EITI to establish this baseline level of knowledge will be one step towards beneficial ownership disclosure, it falls short of what is needed to make real progress. For example, a cursory examination of U.S. state laws – where company formation is generally overseen – would show that no state currently requires or even collect meaningful beneficial ownership information on private companies as they are formed. Knowing this is a far cry from taking steps to actually document such ownership.

Thus, given progress elsewhere, the lack of inclusion of more concrete steps towards collection of beneficial ownership information for the first reporting period for the USEITI is missed opportunity for the U.S. to show leadership on this key aspect of transparency, as the U.S. has in other instances. Moving forward, we urge the MSG and other EITI participants to strive to identify interim steps that could be taken to further advance implementation of beneficial ownership disclosure to ensure it does happen during the next reporting period.

USEITI shouldn't be left behind by others as they move forward, but should instead get ahead of the curve to shape broader adoption and implementation.



Thank you.

## VII. Wrap Up / Closing

Mr. Patrick Field, facilitator from the Consensus Building Institute, reviewed the action items and the decisions coming out of the MSG meeting. MSG members discussed the following substantive points following Mr. Field's summary:

- Ms. Veronika Kohler, National Mining Association, inquired as to why the responsibility to understand the competitive harm that could be caused to companies from project-level reporting had shifted from the DOI's Office of the Solicitor to the Project Level Reporting Working Group, and, indirectly, the industry sector.
  - Mr. Paul Bugala, Calvert Investments, and Mr. John Harrington, ExxonMobil, explained that the Working Group will continue to seek evidence of specific competitive harm issues and that companies are best positioned to provide. Mr. Harrington said that he would be responsible for leading this effort as a member of the Project Level Reporting Working Group.
- Ms. Danielle Brian, Project on Government Oversight, reported that her organization had extended the deadline indefinitely on the survey that it disseminated to its members to understand what types and granularity of reporting would be useful in terms of project-level and company-level reporting.
  - Ms. Veronika Kohler, National Mining Association, said that she would also try to solicit input from companies about what types and granularity of reporting would be useful to them.

The final version of the action items and decisions, as agreed upon by the MSG, is presented in Section II of this meeting summary, above.

Mr. Paul Mussenden, Acting DFO, adjourned the meeting at 12:20 pm.

## VIII. Meeting Participants

The following is a list of attendees from the September 9-10, 2014 EITI meeting.

**Chaired by** Paul Mussenden, Acting Designated Federal Officer for the USEITI Advisory Committee, U.S. Department of the Interior.

### Participating Committee Members

#### Civil Society

Danielle Brian, Project on Government Oversight, USEITI MSG Advisory Committee Co-Chair

Paul Bugala, Calvert Investments

Michael LeVine, Oceana  
Veronica Slajer, North Star Group

#### Government

Curtis Carlson, Department of the Treasury  
Greg Gould, Department of the Interior, USEITI MSG Advisory Committee Co-Chair  
Mike Matthews, State of Wyoming - Department of Audit/Mineral Audit Division  
Mike Smith, Interstate Oil and Gas Compact Commission

#### Industry

Michael Flannigan, Peabody Energy  
Susan Ginsberg, Independent Petroleum Association of America  
Veronika Kohler, National Mining Association, USEITI MSG Advisory Committee Co-Chair  
Robert Reynolds, BP America  
James Roman, ConocoPhillips  
Brent Roper, Rio Tinto  
Johanna Nesseth Tuttle, Chevron

### **Committee Alternates in Attendance**

#### Civil Society

Neil Brown, The Lugar Center  
David Goldwyn, Goldwyn Global Strategies LLC  
Betsy Taylor, Virginia Polytechnic Institute and State University

#### Government

Greg Conrad, Interstate Mining Compact Commission  
Blair Pasalic, Department of Energy  
Debbie Gibbs Tschudy, Department of the Interior

#### Industry

Chris Chambers, Freeport-McMoRan Copper & Gold Inc.  
Nick Cotts, Newmont Mining  
John Harrington, Exxon Mobil Corporation  
Aaron Padilla, American Petroleum Institute  
David Romig, Freeport-McMoRan Oil & Gas

### **Government and Members of the Public in Attendance**

Greg Arend, Deloitte & Touche, LLP  
Liza Baron, Transparency International - USA  
Tawny Bridgeford, National Mining Association  
Ryan Ellis, Interstate Mining Compact Commission  
Marti Flacks, Department of State

Guillermo Garcia, Exxon Mobil  
Jerry Gidner, Department of the Interior  
Jennifer Goldblatt, Department of the Interior  
Mark Hays, Global Witness  
Emily Kennedy, American Petroleum Institute  
Jane Kapral, Deloitte & Touche, LLP  
Alex Klepacz, Deloitte & Touche, LLP  
Robert Kronebusch, Office of Natural Resources Revenue  
Chris Mentasti, Department of the Interior  
Charles Norfleet, Bureau of Ocean Energy Management  
Kimiko Oliver, Department of the Interior  
Jodie Peterson, Office of Natural Resources Revenue  
Haley Rice, Department of State  
Rad Schantz, Bureau of Ocean Energy Management  
Mia Steinle, Project on Government Oversight  
Jon Swedin, Office of Natural Resources Revenue  
Doug Vandegraft, Bureau of Ocean Energy Management  
Claire Ware, Shoshone & Arapaho Tribes  
Lance Wenger, Department of the Interior's Office of the Solicitor  
Judith Wilson, Department of the Interior

### Facilitation Team

Patrick Field, Consensus Building Institute  
Tushar Kansal, Consensus Building Institute  
Rachel Milner Gillers, Consensus Building Institute

## IX. Documents Distributed

- Meeting Agenda ([PDF](#))
- Renewed MSG Charter ([PDF](#))
- June Meeting Summary ([PDF](#))
- Contextual Narrative Document ([PDF](#))
- Revised 2014 USEITI Workplan ([PDF](#))
- Communications Plan ([PDF](#))
- Governors Letter ([PDF](#))
- Independent Administrator Terms of Reference ([PDF](#))
- Outreach Briefing Materials:
  - USEITI Key Milestones & Events ([PDF](#))
  - MSG List of Members ([PDF](#))
  - Description of USEITI Report ([PDF](#))
  - USEITI Outreach Presentation ([PDF](#))
  - USEITI Frequently Asked Questions ([PDF](#))
  - Benefits of USEITI ([PDF](#))

- USEITI Fact Sheet ([PDF](#))

## **X. Certification**

Interested parties are asked to contact USEITI at [useiti@ios.doi.gov](mailto:useiti@ios.doi.gov) or 202-208-0272 with any questions, comments, or concerns regarding the content of this meeting summary.